Nieto v CLDN NY, LLC
2018 NY Slip Op 31722(U)
July 23, 2018
Supreme Court, New York County
Docket Number: 159273/2016
Judge: Arlene P. Bluth

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

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FRANK NIETO,

Plaintiff,

-against-

CLDN NY, LLC,

Defendant.

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CLDN NY, LLC,

Third-Party Plaintiff,

-against-

ECG RETAIL LOGISTICS, LLC,

Defendant.

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Index No. 159273/2016
Motion Seq: 002

DECISION & ORDER
HON. ARLENE P. BLUTH

The motion by plaintiff for summary judgment pursuant to Labor Law § 240(1) is denied because there are issues of fact regarding whether plaintiff was the sole proximate cause of his accident. The cross-motions by third-party defendant ECG Retail Logistics, LLC ("ECG") and by defendant CLDN NY, LLC ("CLDN") are granted in part and denied in part.[1]

Background

Plaintiff was hired to replace ceiling light fixtures at a Ralph Lauren store located at 381 West Broadway in Manhattan on September 30, 2016. While standing on a ladder, plaintiff lost

[1]The Court considered ECG's reply to its cross-motion.

his balance and fell off the ladder. Plaintiff alleges that he suffered a traumatic brain injury and required a spinal fusion, both of which have prevented plaintiff from returning to work.

Plaintiff moves for summary judgment pursuant to Labor Law § 240(1) on the ground that he fell from an unsecured ladder. Plaintiff claims that because a statutory violation occurred– the existence of an unsecured ladder– it does not matter whether plaintiff was the sole proximate cause of his accident.

Both ECG and CLDN cross-move to dismiss plaintiff's common law negligence claims as well as plaintiff's Labor Law §§ 240(1), 200 and 241(6) causes of action. Plaintiff only opposes the branches of these cross-motions that seek to dismiss the 240(1) claim. ECG and CLDN resolved the insurance portions of ECG's motion for summary judgment relating to breach of contract, contractual indemnification and common law indemnification (*see* NYSCEF Doc. No. 67). Therefore, the only remaining issue is plaintiff's Labor Law § 240(1) claim.

Discussion

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York,* 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee,* 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

"Labor Law § 240(1), often called the 'scaffold law,' provides that all contractors and owners . . . shall furnish or erect, or cause to be furnished or erected . . . scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to construction workers employed on the premises" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 499-500, 601 NYS2d 49 [1993] [internal citations omitted]). "Labor Law § 240(1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person" (*id.* at 501).

"[L]iability [under Labor Law § 240(1)] is contingent on a statutory violation and proximate cause . . . violation of the statute alone is not enough" (*Blake v Neighborhood Hous. Servs. of NY City*, 1 NY3d 280, 287, 771 NYS2d 484 [2003]).

Applicability of Labor Law § 240(1)

The Court finds that plaintiff is entitled to the protections of the Labor Law because he claims that he was repairing and installing light fixtures (*see Fitzpatrick v State*, 25 AD3d 755, 809 NYS2d 515 [2d Dept 2006] [finding that replacing light fixtures is covered under Labor Law § 240(1) even though replacing lightbulbs is not covered]). Plaintiff contends that he was hired to "replace light fixtures" (NYSCEF Doc. No. 33) and a copy of the work order instructed plaintiff to "Paint and repair all that is needed in store and replace light fixtures" (NYSCEF Doc. No. 36). The Court rejects the argument that the Labor Law is inapplicable to this incident. The fact that plaintiff may have done some work not covered by the Labor Law does not remove Labor Law protections where his job description– to replace light fixtures– clearly falls under the Labor Law.

The Accident

The Court reviewed the surveillance video of the incident (NYSCEF Doc. No. 56). The video depicts the accident as well as the moments leading up to, and after, the accident. Right before the accident, plaintiff was working on the A-frame ladder while his co-worker (Santiago Escobar) was looking at his cellphone and not holding the ladder. At first plaintiff's feet were pointing toward the inside of the "A", that is, he was facing the ladder. Plaintiff then turned his body so that he was no longer facing the ladder, so that his back would be toward the ladder. When he was twisting around, he twisted his feet and made it so his feet were no longer perpendicular to the ladder rung and his foot slipped. Plaintiff lost his footing, his foot went behind him toward the A frame and he fell off the ladder. The ladder did not topple.

The Court finds, after reviewing the video, that there is an issue of fact with respect to whether plaintiff was the sole proximate cause of the accident. The video shows that plaintiff fell as he tried to use the ladder in an abnormal way– he turned his body and feet sideways and his foot slipped into the space between the rungs. A jury could find that plaintiff's choice to twist around on the ladder rather than descend the ladder and re-position it so he could complete his work was the cause of the accident.

However, the Court declines to dismiss the Labor Law § 240(1) claim because, although the ladder did not topple, the video also shows that as plaintiff was falling, he extended his right hand and grasped the top of the ladder. At this point the ladder shifted (because the ladder was unsecured) and plaintiff was unable to prevent his fall. Had Santiago– his coworker– properly secured the ladder instead of being on his cellphone, the jury might conclude that plaintiff might have caught himself and avoided the fall. Ultimately, a jury must determine whether Santiago's decision not to secure the ladder or whether plaintiff's improper use of the ladder was the proximate cause of the accident.

Summary

To be clear, there is an issue of fact in this case because the Court cannot determine whether the purported Labor Law violation (an unsecured ladder) was the *proximate cause* of plaintiff's accident. It may be that the jury watches the video and concludes that it would have made no difference whether the ladder was secured because plaintiff's fall was the result of his foot slipping off the rung after improperly using the ladder. The video did not show that the ladder shifted or moved prior to plaintiff's slip and there is no evidence that the ladder was

defective. Alternatively, the jury might decide that plaintiff could have caught himself on the top rung if the ladder was secured. The Court cannot make those factual determinations on a motion for summary judgment.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is denied; and it is further

ORDERED that the cross-motions by CLDN NY, LLC and ECG Retail Logistics, LLC for summary judgment are granted to the extent that plaintiff's common law negligence, Labor Law §§ 200 and 241(6) claims are severed and dismissed and denied to the extent that the cross-motions sought dismissal of plaintiff's Labor Law § 240(1) claim. The branches of ECG's motion relating to insurance were resolved via stipulation.

Dated: July 23, 2018
New York, New York

ARLENE P. BLUTH, JSC